IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.605 OF 2006
CONNECTED WITH COMPANY APPLICATION NO.831 OF 2006

1. Shaw Wallace Breweries Ltd.
..Petitioner Company.

Dr. Verendra Tulzapurkar with Mr. Virag Tulzapurkar, Mr. K.G. Munshi, Ms. Alphana Ghone and Mr. Ravi Gandhi i/by Kanga & Co. for the petitioner.

Mr. Pankaj Kapoor for the Reguional Director.

CORAM : R.S. MOHITE, J.
DATED : 1ST DECEMBER,2006.

P.C.

1. This is a petition filed by Shaw Wallace Breweries Ltd. which is the transferee company. The petition has been filed under Sections 391 to 394 read with Sections 100 to 103 of the Companies Act,1956 for amalgamation of the transferor company being Saw Wallace Breweries Limited with the transferee company as per the scheme which is annexed at Exh.H to the petition. I am informed that the transferor company has filed a separate petition in the Calcutta High Court for sanction of the same scheme.

2. After hearing both the sides and perusing the record, I find that the requisite procedure has been followed. All the shareholders of the transferor

company has approved the proposed scheme and 99.9 per cent of the shareholders of the transferee company by value, have also approved the said scheme.

3. A copy of the petition was served on the Regional Director and two affidavits have been filed by the Regional Director. In the first affidavit dated 22.11.2006, the Regional Director has stated that he had obtained a report from the Registrar of Companies on 12.10.2006 and also collected information from the Advocates of the petitioner company. That, under the said scheme equity shares to the extent held by the transferor company in the transferee company will be reduced from Rs.148,20,50,180 to Rs.77,61,50,180/-. That the aforesaid deduction will be affected by cancelling 7,05,90,000/- equity shares of Rs.10/- each. That the affidavits of the Regional Director indicates that there was no prosecution against the company or his Directors for violation of various laws such as Companies Act, FERA, I.P.C. SEBI Act. and that there is a income tax liability of Rs.67,887/- for the Assessment Year 2003-04 for which the company is in the process of filing an appeal with the Appellate authorities. Other than this there are no pending tax liabilities like Income Tax, Sales Tax or any Govt. tax. He has raised two objections that the authorised

capital of the transferee company would stand increased to Rs.165,00,00,000/- and hence, the transferee company may be directed to comply with the provisions of Sections 94/97 of the Companies Act,1956 and that since the object/class of Memorandum of Association of the Transferee Company would required to be amended/reclassified, the transferee company should be directed to comply with the provisions of Section 17/18 of the Companies Act,1956. During the hearing of this petition, the Addl. Government Counsel for the Regional Director had sought to contend by way of an affidavit that the swap ratio was unfair. I had directed him that he should let the Regional Director to know about his objections and after that was done, the Regional Director Western Region filed further affidavit in this court dated 30.11.2006, in which, he has contended his reasons as to why, according to him, the swap ratio cannot be said to be unfair. In this affidavit, it is also stated that the swap ratio was approved by the Calcutta High Court while considering the same scheme.

4. The Advocate for the petitioner states that the transferor company has only 7 shareholders and the transferee company has 10 share holders and both the companies are public but unlisted companies. The shareholders of both the companies have accepted the

swap ratio and even assuming that the ratio was not fair, this was a matter to be left to the commercial wisdom of the concerned shareholders who had accepted the scheme. My attention was drawn to the observations of the Apex Court in the case of **Miheer H. Mafatlal Vs. Magfatlal Industries ltd. reported in A..I.R.1997 S.C.506** wherein the scope of the company court in such matters as well as a point relating to the unfairness of the exchange ration were dealt with. The Apex Court held that a Company Court should not function as an Appellate Court and its jurisdiction was supervisory in nature. As far as the swap ratio is concerned, it was observed in the said case that the calculations of the swap ratio was a complicated matter requiring special expertise and the same has been calculated by the Chartered Accountant. In the present case also the swap ratio has been arrived at by the Chartered Accountant vide his report dated April,2006. The same has been approved by the equity shareholders in their meetings. I do not feel that it would be proper or permissible to go into the question of swap ratio being unfair or improper. What I understand to be the objection is that the swap ratio was calculated without taking into account the fact that the shares of the transferor company were being cancelled. The Advocate for the petitioner points out the calculations in respect of the

swap ratio must be done on the basis on facts as exist before the scheme is accepted.

5. No other person has raised any objection after advertisement of the petition. In the circumstances, I see no reason as to why the petition should not be allowed. Accordingly, petition is allowed in terms of prayer clause (a) to (k). The petitioner to deposit Rs.2500/- within a period of 4 weeks from today to meet the costs of the Regional Director.

6. Drawn up order is dispensed with. All parties to act on a copy of this order duly certified by the Company Registrar of this Court.

. Petition stands disposed off.

(R. S. MOHITE, J.)